

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

J & J Sports Productions, Inc.,

Case No.: 2:17-cv-02356-JAD-BNW

Plaintiff

v.

**Order Granting Amended Motion for
Default Judgment**

Gonzalez Brothers, Inc. d/b/a La Parranda Bar
and Night Club and Jose R. Gonzalez,
individually,

[ECF No. 22]

Defendants

This signal-piracy action arises out of the defendants’ allegedly unauthorized 2014 broadcast of a boxing match, which plaintiff J&J Sports purportedly had the exclusive right to air under its contract with the match promoter, Mayweather Promotions. The defendants failed to appear, default was entered against them,¹ and J&J Sports moved for entry of default judgment.² I denied the motion because J&J Sports failed to demonstrate that its exclusive right extended to Clark County, Nevada, where the defendants broadcasted the match.³ J&J Sports now renews its motion for entry of default judgment,⁴ explaining that Mayweather waived the contractual provision requiring written authorization for J&J Sports to show the match in Clark County, Nevada.⁵ I find that J&J Sports has sufficiently established the issue that initially prevented me

¹ ECF No. 12; ECF No. 13.

² ECF No. 15.

³ The contract granted J&J Sports “the exclusive license to exhibit, only within the fifty states of the United States of America, *with the exception of Clark County Nevada* [sic] which shall be ‘blackout’ unless [J&J Sports] receives written authorization by Promoter to exhibit the Event . . . within Clark County.” ECF No. 15-1 at 9 (emphasis added). Although the contract was attached to a previous motion, I consider it as part of the record.

⁴ ECF No. 22.

⁵ ECF No. 18 at ¶ 7.

1 from granting default judgment. Finding that the *Eitel v. McCool*⁶ factors weigh in J&J Sports’
 2 favor, I grant its motion for default judgment and close this case.

3 Discussion

4 I. Default-judgment standard

5 Federal Rule of Civil Procedure 55(b)(2) permits a plaintiff to obtain default judgment
 6 from the court if the clerk previously entered default based on defendants’ failure to defend.⁷

7 The court has discretion to enter default judgment,⁸ which is guided by the seven *Eitel* factors:

8 (1) the possibility of prejudice to the plaintiff; (2) the merits of
 9 plaintiff’s substantive claim; (3) the sufficiency of the complaint;
 10 (4) the sum of money at stake in the action; (5) the possibility of a
 11 dispute concerning material facts; (6) whether the default was due
 12 to excusable neglect; and (7) the strong policy underlying the
 13 Federal Rules of Civil Procedure favoring decisions on the merits.⁹

14 As default as already been entered in this case, the court must take all of the complaint’s factual
 15 allegations as true, except those relating to damages.¹⁰ “[N]ecessary facts not contained in the
 16 pleadings, and claims [that] are legally insufficient, are not established by default,”¹¹ and the
 17 court can consider additional proof of facts or damages to ensure that default judgment is
 18 appropriate.¹²

19 ⁶ *Eitel v. McCool*, 782 F.2d 1470 (9th Cir. 1986).

20 ⁷ See Fed. R. Civ. P. 55(b)(2).

21 ⁸ *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980).

22 ⁹ *Eitel*, 782 F.2d at 1471–72.

23 ¹⁰ See *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987) (per curiam).

¹¹ *Cripps v. Life Ins. Co.*, 980 F.2d 1261, 1267 (9th Cir. 1992).

¹² See Fed. R. Civ. P. 55(b)(2).

1 **II. The *Eitel* factors weigh in favor of granting default judgment.**

2 **A. The first, fifth, sixth, and seventh *Eitel* factors**

3 In cases like this one, in which the defendants have not participated in the litigation, the
 4 first, fifth, sixth, and seventh *Eitel* factors are easily satisfied. The first factor clearly weighs in
 5 favor of default judgment—if I were to deny its motion, J&J Sports would be without another
 6 recourse of recovery or remedy, incurring significant prejudice. And the fifth and sixth factors
 7 weigh in favor of default judgment. Due to the defendants’ failure to participate, there is no
 8 dispute over material facts and no indication that default is due to excusable neglect. Although
 9 the seventh factor “arguably always weighs against the entry of default judgment”¹³ because
 10 cases “should be decided on their merits whenever reasonably possible,”¹⁴ when defendants fail
 11 to answer the complaint, a decision on the merits is “impractical, if not impossible.”¹⁵ The
 12 seventh factor is outweighed by the other factors here.

13 **B. The second and third *Eitel* factors**

14 The second and third *Eitel* factors require J&J Sports to demonstrate that it may recover
 15 under its stated claims.¹⁶ “Of all the *Eitel* factors, courts often consider the second and third
 16 factors to be the most important.”¹⁷ J&J Sports brings its claims under the Communications Act
 17 of 1934,¹⁸ which “prohibits the unauthorized receipt and use of radio communications for one’s
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20 ¹³ ECF No. 22 at 12.

21 ¹⁴ *Eitel*, 782 F.2d at 1472.

22 ¹⁵ *PepsiCo, Inc. v. California Security Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).

23 ¹⁶ *See Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978).

¹⁷ *Vietnam Reform Party v. Viet Tan – Vietnam Reform Party*, 416 F. Supp. 3d 948, 962 (N.D. Cal. 2019).

¹⁸ 47 U.S.C. § 605(a).

own benefit or for the benefit of another not entitled thereto.”¹⁹ To succeed on its claim, J&J Sports must establish that (1) it had the exclusive right to broadcast the fight; (2) the defendants did not have a sub-license to broadcast the fight; (3) the defendants broadcasted the fight; and (4) (for enhanced damages) the defendants broadcasted the fight for commercial gain.²⁰ The undisputed facts in this case establish all of those elements.

J&J Sports has shown that it had the exclusive right to broadcast the boxing match.²¹ Although its contract with Mayweather expressly excludes Clark County from its exclusive right to broadcast, J&J Sports has demonstrated that Mayweather waived that provision, thus allowing J&J Sports to sub-license its broadcast rights to establishments in Clark County.²² The complaint alleges that defendants did not have a sub-license to broadcast the boxing match, but did so anyway when they showed it on televisions at their bar.²³ And they did so for commercial gain by imposing a ten-dollar cover charge.²⁴ Because default has been entered against the defendants, they have admitted these facts, and I take them as true. The second and third *Eitel* factors thus favor the entry of default judgment.

C. The fourth *Eitel* factor

The fourth *Eitel* factor concerns the damages at stake in the case. J&J Sports seeks \$10,000 in statutory damages and \$30,000 in enhanced statutory damages, for a total of

¹⁹ *DirecTV, Inc. v. Webb*, 545 F.3d 837, 844 (9th Cir. 2008) (internal quotation marks and citation omitted).

²⁰ See 47 U.S.C. § 605(a) & (e)(3)(C)(ii).

²¹ ECF No. 18 at ¶¶ 5–7.

²² *Id.* at ¶ 7; *id.* at 6–7.

²³ *Id.* at 6–7 (listing the sub-licensed establishments that were authorized to broadcast the boxing match, which does not include defendants’ bar).

²⁴ ECF No. 15-2 (affidavit from investigator who observed the defendants broadcasting the boxing match; although attached to a previous motion, I consider it as part of the record).

1 \$40,000.²⁵ *Eitel*'s sum-of-money factor requires me to consider the amount of money at stake in
 2 relation to the seriousness of the defendants' conduct.²⁶ Default judgment is disfavored if the
 3 sum of money at stake is "completely disproportionate or inappropriate"²⁷ or if the plaintiff
 4 cannot recover its damages under the laws for which it seeks a remedy. The damages sought in
 5 this case are reasonable, as they are within the limits established by Congress under the
 6 Communications Act of 1934.²⁸ The sum of money at stake in this action is proportional to the
 7 seriousness of the defendants' conduct, so this factor also favors the entry of default judgment.

8 **III. Attorney's fees**

9 J&J Sports requests 14 days from the entry of this order to file a motion for costs and
 10 attorney's fees, under 47 U.S.C. § 605(e)(3)(B)(iii).²⁹ I grant this request and instruct J&J Sports
 11 to ensure its motion complies with Local Rule 54-14.

12 **Conclusion**

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 14 IT IS THEREFORE ORDERED that the Amended Motion for Default Judgment [ECF
 15 No. 22] is GRANTED. J&J Sports has until **December 17, 2021**, to file a motion for costs and
 16 attorney's fees. And with good cause appearing and no reason to delay, IT IS FURTHER
 17 ORDERED that the Clerk of Court is directed to **ENTER FINAL JUDGMENT against the**
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²⁵ ECF No. 22 at 13.

21 ²⁶ *Twentieth Century Fox Film Corp. v. Streeter*, 438 F. Supp. 2d 1065, 1071 (D. Ariz. 2006)
 22 (quoting *PepsiCo, Inc.*, 238 F. Supp. 2d at 1176).

23 ²⁷ *Id.*

²⁸ See 47 U.S.C. § 605(e)(3)(C)(i)(II) & (e)(3)(C)(ii).

²⁹ ECF No. 22 at 17.

1 **defendants, jointly and severally, in the amount of \$40,000** (which consists of \$10,000 in
2 statutory damages and \$30,000 in enhanced statutory damages) and **CLOSE THIS CASE.**

3 Dated: December 3, 2021

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5 U.S. District Judge Jennifer A. Dorsey
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